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Provincial Offences Procedure Applicable to Young Persons: A Discussion Draft of Amendments to the Provincial Offences Act

AUGUST 1983

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FOR E W O R D

Young People under the age of 16 years who violate provincial laws and municipal by-laws are now prosecuted under the federal Juvenile Delinquents Act. The new federal Young Offenders Act, which will repeal and replace the Juvenile Delinquents Act will not apply to provincial statute and municipal by-law violations. Accordingly, Ontario must review its policy concerning persons under the age of 16 years who breach provincial laws.

In 1979 through enactment of the Provincial Offences Act Ontario adopted a significantly new approach to adult provincial offenders. We now have an opportunity to consider new approaches to young provincial offenders.

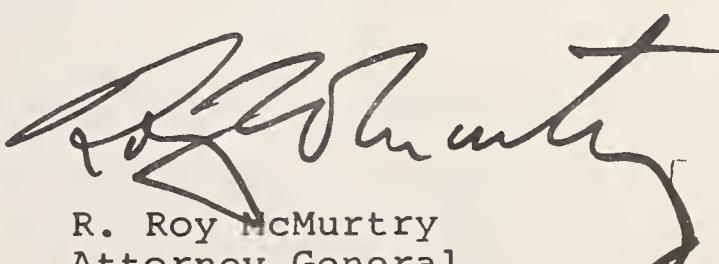
In the accompanying policy highlights and legislative proposals we have taken the position that the principles and procedures that have worked so successfully in the Provincial Offences Act be extended to young persons between the ages of 12 to 15 years inclusive, but with appropriate modification to take into account the special circumstances of young people in this age group.

Developing government policy for young provincial offenders has not been a simple task. Some of the issues that have been raised were discussed more fully in a public consultation paper, "Implementing Bill C-61: the Young Offenders Act" and are referred to in the discussion of the policy highlights in this paper. Nevertheless, we are confident that the proposals we are making will work well in the interest of young people and the administration of justice in this province.

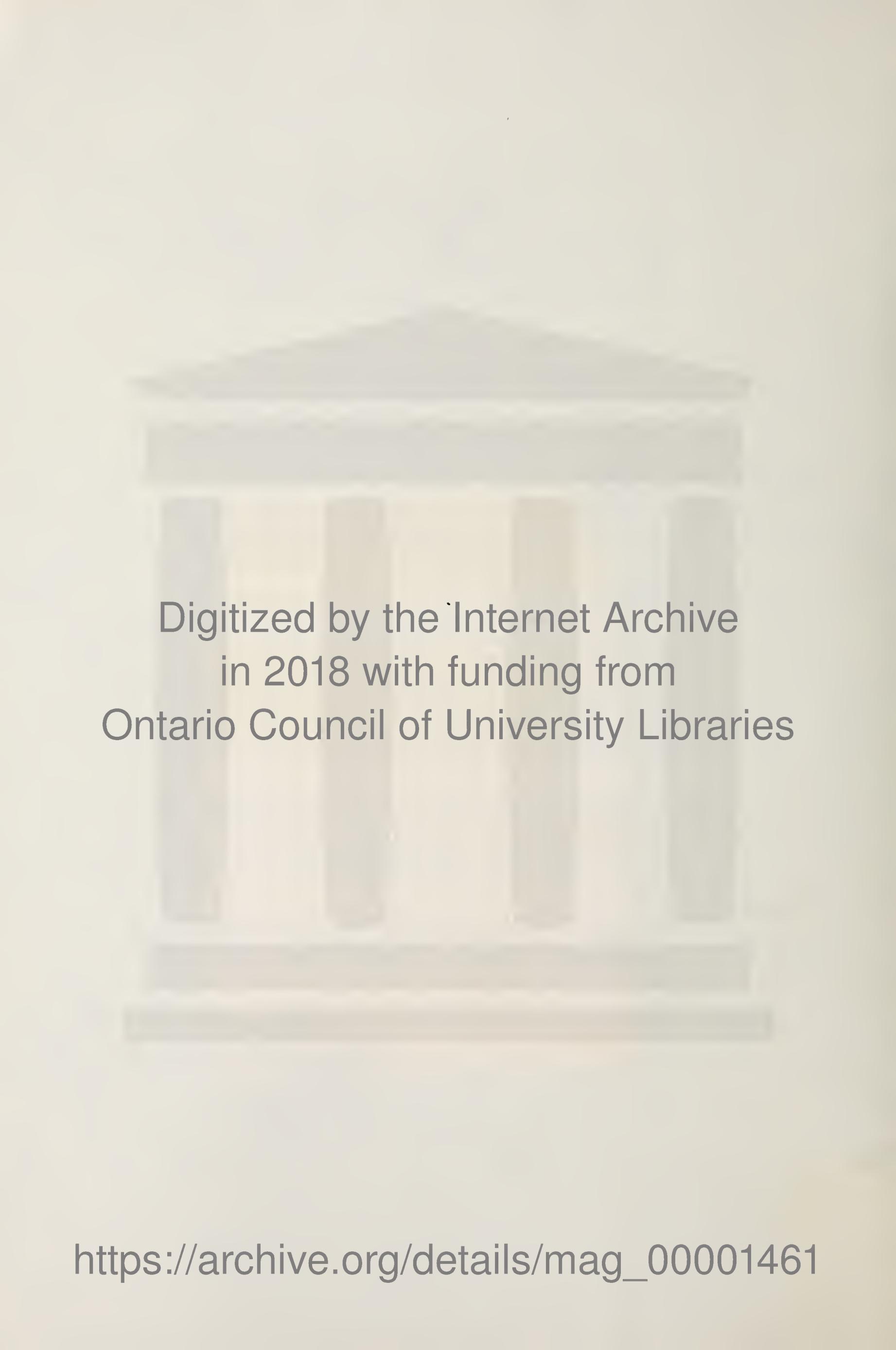
With the prospect of proclamation of the federal Young Offenders Act next spring, it is necessary to introduce complementary provincial legislation this fall. Consequently, I must ask that comments on the proposals be received no later than October 1, 1983.

Comments should be sent to the Policy Development Division, Ministry of the Attorney General, 15th Floor, 18 King Street East, Toronto, Ontario, M5C 1C5.

August 1983



R. Roy McMurtry
Attorney General

A faint, light-colored watermark of a classical building with four columns and a pediment is visible in the background.

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DISCUSSION PAPER

PROVINCIAL OFFENCES AND THE YOUNG PERSON: HIGHLIGHTS OF ONTARIO'S PROPOSED POLICY

INTRODUCTION

At present a person under 16 years of age who violates a provincial statute or municipal by-law is prosecuted under the federal Juvenile Delinquents Act for the offence of delinquency. For the purposes of the Juvenile Delinquents Act there is no distinction between violations of provincial statutes and violation of federal statutes.

The federal Young Offenders Act, will apply only to young persons charged with offences against the Criminal Code and other federal statutes. Accordingly, Ontario must now adopt a policy with respect to young persons who commit provincial offences and breach municipal by-laws.

Children under 12 years of age who engage in illegal behaviour are the subject of policy proposals being prepared by the Ministry of Community and Social Services.

Children who are habitually absent from school are the subject of policy proposals being prepared by the Ministry of Education.

The Nature of Provincial Offences

Provincial offences in general differ greatly from the large majority of offences under the Criminal Code and other federal laws such as the Narcotic Control Act. Whereas most criminal offences constitute acts which are prohibited absolutely, such as assault or robbery, virtually all provincial offences arise from violations of

laws or by-laws which are usually intended merely to regulate various activities which are in themselves lawful. Examples of provincial offences are careless driving, racing on a highway, speeding, driving a motor-assisted bicycle while under 14, operating a bicycle with improper lighting, operating a bicycle without a horn, hitchhiking, consuming liquor while under 19 years of age, and trespassing.

Activities are regulated under provincial law in order to protect the safety and well-being of the community as a whole. The harm caused by conduct which only violates provincial laws is not within the ambit of the criminal law. The penalties to which persons are liable upon conviction are usually not severe; in the majority of cases only a monetary fine is imposed. Imprisonment is seldom ordered upon conviction and is not used for defaulted fines unless it is very clear that there is little likelihood of collecting a fine. Where there is no specific penalty prescribed, there is a general maximum penalty of \$2,000. However, in most cases specific penalties are prescribed for specific offences.

Extent of Provincial Offences

Relatively few young persons are charged with provincial offences. In 1980 there were about 581,500 persons in Ontario in the 12-15 age group. Only about 2,600 charges were laid in relation to provincial statute violations - about one charge for every 223 persons in the age group. About one-third of those charges were dismissed. In comparison, over 20,000 charges - almost eight times as many - were laid in relation to Criminal Code and other federal statute violations.

A CHOICE OF PRINCIPLES

The public consultation paper, "Implementing Bill C-61: The Young Offenders Act", (November 1981) prepared by the Interministry Implementation Project, contains quite a full discussion prepared by the Ministry of the Attorney General on the major issues and options in relation to provincial offences committed by young persons. Three options are set out in the Consultation Paper. For practical purposes these options can now be put as follows:

- (A) Choose the Young Offenders Act
- (B) Choose the Provincial Offences Act
- (C) Choose the Provincial Offences Act, with modifications.

(A) The Young Offenders Act

Using the provisions of the Young Offenders Act for provincial offences would represent, so far as possible, a continuation of the present administrative system in which the same philosophy, procedures and penalties are applied to all young persons without regard to whether the offence is criminal or provincial. Because that is the system that, due to federal policy, has existed in Ontario for over 70 years, continuation of the system would have some advantages of administrative convenience. The justice system could continue to deal with all young persons in the same manner, albeit in a criminal law context. However, continuing to treat all young persons, regardless of offence, under the Young Offenders Act is not the same as continuing to use the Juvenile Delinquents Act. The Young Offenders Act is clearly designed to emphasize the criminal nature of the proceedings, and introduces

elaborate and complex procedures that are not justified by the minor character of most provincial offences.

(B) The Provincial Offences Act

Using the Provincial Offences Act would represent a move from the current juvenile system, where all young persons are subject to the same procedures regardless of the offence, to a system in which the same philosophy, procedures and penalties are applied to the same offence, regardless of the age of the offender.

While this would be a new approach for Ontario in respect of young persons, it must be pointed out that because of the federal Juvenile Delinquents Act provisions Ontario has never had an opportunity to adopt a policy on this matter. However, certainly with respect to adults, the Provincial Offences Act represents a strong belief that there are fundamental distinctions between criminal offences and provincial offences that demand completely separate procedural systems. The importance attached to distinguishing between procedures for true crimes and procedures for provincial offences can be seen in section 2 of the Provincial Offences Act where the Legislature has expressly stated:

"2(1) The purpose of this Act is to replace the summary conviction procedure for the prosecution of provincial offences, including the provisions adopted by reference to the Criminal Code (Canada), with a new procedure that reflects the distinction between provincial offences and criminal offences."

However, because the Provincial Offences Act has not applied to young persons it does not give any consideration to such matters as notifying the parents of a young person, the appropriateness of trying young persons and adults in the same court, and the likelihood that young persons, because of inability to pay a fine, would be more vulnerable to being committed to custody. Therefore, although direct application of the Provincial Offences Act would achieve the important goal of distinguishing between provincial and criminal offences, it would not recognize any special needs of the younger provincial offender.

(C) The Provincial Offences Act, With Modifications

Without more being said, it seems clear that, despite some advantages of administrative convenience in applying the Young Offenders Act to provincial offences, justice, fairness and equality indicate that every effort should be made to treat young persons who commit provincial offences under the unique philosophy and procedures of the Provincial Offences Act. In Ontario provincial offences have been recognized as a category of conduct fundamentally different from true criminal offences. Therefore, it appears that the only reasonable alternative for provincial offences by young persons is to reject the Young Offenders Act option, which would treat provincial offences as if they were criminal offences, and adopt the Provincial Offences Act model which recognizes the special character of provincial offences.

In responses by the public to the consultation paper, the Provincial Offences Act approach seemed to be regarded favourably. There was very little support for a direct application of the Young Offenders Act to provincial offences.

Nevertheless, the Provincial Offences Act does require some modification to take into account the special needs, and circumstances of young persons. Just as the Young Offenders Act represents a special mode of proceeding against young persons who commit criminal offences, special modes of proceeding should be developed for young persons who commit provincial offences.

MODIFICATIONS OF THE PROVINCIAL OFFENCES ACT

NOTE: It is not possible in this short discussion paper to outline in detail the many features of the Provincial Offences Act as it applies to adults. Readers not familiar with the Provincial Offences Act should refer to the Ministry publication Minor Offences, which summarizes the Act and contains a copy of the legislation. This booklet is available from the Communications Office of the Ministry of the Attorney General.

There are several areas in which the Provincial Offences Act might be modified to recognize that, although young persons should be held responsible for their behaviour, they need not be held accountable in the same manner as adults.

MAXIMUM AGE

As a result of the Young Offenders Act Ontario must now develop a provincial policy with respect to persons under sixteen years of age who commit provincial offences, such as driving without a licence, drinking, and trespassing. These offences were previously dealt with under the Juvenile Delinquents Act.

However, another result of the Young Offenders Act is that on or after April 1, 1985 persons sixteen or seventeen years of age who commit criminal offences will be dealt with under that Act instead of the Criminal Code, which applies to adults who commit criminal offences.

Parliament has adopted the view that persons under eighteen are still in a developmental stage of acquiring full social and legal maturity, and therefore, although responsible for their conduct, should not be held accountable in the same manner as adults. The adoption of this principle as national policy in relation to criminal offences raises the issue of whether persons sixteen or seventeen years of age who commit provincial offences should be dealt with differently than adults who commit provincial offences.

After examining the issue of increasing the age range for a special provincial offence procedures from 12-15 to include 16- and 17-year-olds, it is recommended that no change be made in the age range. The proposed amendments should apply to young persons 12-15 years of age. The regular Provincial Offences Act should continue to apply to persons 16 years of age and over.

The type and number of provincial offences change dramatically after the age of 15 years. The vast majority of all provincial offences are traffic violations. Because the driving age in Ontario is 16 years there are more than ten times as many provincial offences in the 16-17 age group as in the 12-15 age group. The present provisions of the Provincial Offences Act were designed very much to deal with motor vehicle offences. There is no real difference between a 16-year-old who makes an improper left-hand turn and a 26-year-old who makes an improper left-hand turn.

Accordingly, if the age range were increased from 12 to 15 years to 12 to 17 years, it would be dominated by 16- and 17-year old traffic offenders, who probably require few, if any, modifications to the Provincial Offences Act.

Since the vast majority of offenders in the 12-17 year age group would be 16- and 17-year-olds with traffic offences, any modifications would have to focus on the problems of the 16- and 17-year-olds, to the detriment of the younger provincial offenders. For example, it would not be reasonable to require mandatory notice to be given to the parent of a 17-year-old who gets a speeding ticket. Therefore, mandatory notice to parents would not form part of the modifications, with the result that notice would not be given to the parent of a 12-year-old who is charged with a violation of the Highway Traffic Act. But if the age requirements were set out as we propose, the parent of the 12-year-old or 15-year-old would get notice, while the parent of the 16-year-old would not.

The large volume of offences by 16- and 17-year-olds relative to 12- to 15-year-olds would have a significant impact on the designation of the court to try provincial offences.

Increasing the age range for all provincial offences except traffic violations would put a 16- or 17-year-old in the anomalous position of being a young person for some provincial offences, an adult for other provincial offences, and a young person for criminal offences.

Including 16- and 17-year-olds in the special procedures for provincial offences would greatly complicate the prosecution of parking infractions.

Sixteen years of age, which is the provincial standard for compulsory education, child welfare proceedings and marriage with parental consent, is accepted as a reasonable basis for distinguishing among young persons' rights and responsibilities.

Including 16-17-year-olds would be complicated by the need to adopt a two step implementation process, to coincide with the phasing-in of the federal Young Offenders Act.

While it is recognized that some difficulties of perception might arise if 16- and 17-year-olds are "adults" for provincial offences and "young persons" for criminal offences, it is felt that the special nature of provincial offences dictates continued use of the present Provincial Offences Act for 16- and 17-year-olds. The interests both of 12- to 15-year-olds and 16- and 17-year-olds will be better served in respect of provincial offences by development of special procedures for only the 12- to 15-year-old age group. Nevertheless, before the maximum age increases under the Young Offenders Act in 1985 the Ministry will continue to consider the most appropriate ways to respond to the differences in age range that would then exist under the Young Offenders Act and the modifications now proposed for the Provincial Offences Act. Written comments may be addressed to the Ministry on this matter.

METHOD OF PROCEEDING

Where an adult commits a provincial offence there are three methods of proceeding:

1. Part I Offence Notice

2. Part I Summons

3. Part III Information

Use of Part I proceedings decreases the amount of police work and allows proceedings to be commenced quickly and efficiently while limiting the liability of the defendant to a fixed fine or a maximum fine of \$300. A Part I Offence Notice permits the defendant to accept liability and dispose of the matter without appearing for trial. If the defendant wishes to plead not guilty a trial will be held.

A Part I Summons means that a court hearing will be held whether or not the defendant wishes to plead guilty. There is a \$300 limit on the amount of the fine.

With respect to young persons the proposed amendments provide that the Part I Offence Notice (ticket) is not to be used where the defendant is a young person. Where defendants may be as young as 12 and 13 years of age, their rights will be better protected by having the charges dealt with in court, with an opportunity for parental involvement and with penalties that need not be fines. Accordingly, proceedings against a young person under Part I should be limited to the Summons procedure. The sentences available where a Part I Summons is used will be modified, as discussed below.

In Part III proceedings, commenced by information, there are no out-of-court options and the full range of penalties is available. Part III proceedings would be used primarily for more serious breaches of provincial offences.

ARREST

The power to arrest an adult for a provincial offence is limited to those few statutes which specifically confer the power of arrest. The principal arrest powers are in relation to traffic offences, liquor offences and trespass to property.

One of the amendments to the sentencing provisions, discussed below, is that a young person who is convicted of a provincial offence should not be subject to a penalty of imprisonment. If the young person is not to be placed in custody following conviction by the court every effort should be made to avoid depriving the young person of his liberty before he has been convicted. Nevertheless, there is no law requiring a person found committing a provincial offence to identify himself to the police. A young person should be required to identify himself where an adult would be required to identify himself, so that appropriate charges can be laid. Similarly, the police should be able to prevent continuation or repetition of serious offences.

With regard to this issue the proposed amendments provide that where a provincial statute would permit an adult to be arrested, a young person may be arrested only where the arrest is necessary in the public interest having regard to the need to establish the identify of the young person or prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or the person or property of another.

PRE-TRIAL RELEASE

An adult arrested for a provincial offence must be released by the arresting officer unless continued detention is necessary

- (a) to establish the identify of the defendant
- (b) to preserve the evidence
- (c) to prevent further commission of an offence or
- (d) to ensure attendance because the person is not resident in Ontario.

If the person is not released by the arresting officer the officer in charge should release unless the grounds for detention continue. The defendant may be required to enter into a recognizance.

If detention is still necessary the defendant must be taken before a justice, who shall release unless detention is justified to ensure attendance in court. The justice cannot order detention to prevent commission of a further offence. The justice can require cash bail only if a recognizance is not appropriate and only where the offence is punishable by imprisonment for a year or more.

The maximum amount of cash bail that can be required is \$1,000.

This approach should be followed for young persons, except the grounds for continued detention by the police officer should be restricted to cases where the grounds for arrest continue. (See "Arrest" above.)

DETENTION

Because the Provincial Offences Act does not now apply to persons under 16 years of age, the amendments provide that where a young person must be detained, he should be detained separate from adults. If the sentence is to custody for breach of probation, the sentence should be served in "open custody" as provided under the Young Offenders Act.

NOTICE TO PARENTS

The Provincial Offences Act contains no provision for notice to parents. The amendments provide that notice should be given to a parent of the young person or an adult with whom the young person ordinarily resides when a summons is issued or when the young person is held for a bail hearing.

ATTENDANCE AT TRIAL

Under the Provincial Offences Act, if the defendant does not appear the court may proceed ex parte to hear and determine the proceeding, issue a summons, or issue a warrant for the arrest of the defendant. Alternatively the defendant may be charged under section 43 with the offence of failing to appear.

Under the Young Offenders Act the young person must be present at his trial. Therefore the court could not proceed ex parte and would have to issue a warrant for the arrest of the young person. A charge could be laid under the Criminal Code (section 133(5)) or the young person

could be liable for contempt of court under section 47 of the Young Offenders Act.

The amendments to the Provincial Offences Act require the young person to be present at trial but prohibit the court from proceeding ex parte and prohibit charges for the offence of failing to appear. In effect, the court must issue a summons to appear or a warrant for the arrest of the young person to bring him before the court for the trial.

DESIGNATION OF THE COURT

Under the Provincial Offences Act, except in a few cases where jurisdiction is specifically conferred on the Family Court, it is intended that a distinct court, the Provincial Offences Court, have jurisdiction to try provincial offences. The creation of a separate court that would develop its own style, approach and jurisprudence was an integral part of the government's policy on provincial offences. Rules of practice and procedure have been made for the Provincial Offences Court and forms specifically prescribed.

Structurally, although not philosophically, the Provincial Offences Court is closely related to the Provincial Criminal Courts. They share the same physical facilities, the justices are justices of the peace for the provincial criminal courts, and the chief judge of the Provincial Offences Court is the chief judge of the Provincial Court (Criminal Division).

At present, under the Juvenile Delinquents Act provincial offences by persons under sixteen are tried by Judges of

the Family Court. Justices of the peace in the Provincial Court (Family Division) do not try cases.

Designation of the judges who should try provincial offences is a difficult problem. It may be felt that it is desirable to ensure that all young persons in the same age group who commit offences should be dealt with by the same judges. However, until a number of policy issues are decided it is not possible to state definitely which judges will try certain cases under the Young Offenders Act after the age change in April, 1985. In the meantime a position must be taken with regard to provincial offences. Since young persons currently charged with provincial offences appear before judges of the family court, albeit under the Juvenile Delinquents Act, the minimum dislocation for the time being would be to designate family court judges to try provincial offences by young persons. Family court judges now try adult provincial offenders for offences under the Education Act and the Child Welfare Act.

All the rules, forms and procedures of the provincial offences court would apply, except where specifically modified to meet the special needs of young persons.

SENTENCING

One of the principles of the Provincial Offences Act is that a fine is usually the appropriate penalty for a provincial offence. However the penalties are established by the individual statutes that create the offence. The Provincial Offences Act does, however, contain some ancillary provisions, such as probation and procedures for collecting defaulted fines.

As young persons will generally have limited ability to pay a fine and imprisonment is shunned by the Provincial Offences Act, consideration must be given to the type of penalties that should be applied to young persons who are convicted of a provincial offence.

Under the scheme of the Provincial Offences Act different levels of penalties flow from the choice of proceedings under Part I or Part III.

Part I Summons

- (1) Fines: The principal penalty for an adult where a Part I Summons is used is a fine not more than the maximum fine established by the offence-creating statute or \$300, whichever is less. For young persons the amendments would limit the fines even further when a Part I Summons is used. The fine is not to exceed the least of the set (fixed) fine, or \$300 or the maximum fine specifically prescribed. In effect, in most cases the young person would not be liable to a fine any greater than the fine payable by an adult who gets an Offence Notice (ticket). Indeed, the fine could be even less.
- (2) Probation: Probation is not available as a penalty where a Part I Summons is used in respect of an adult. However, where young persons are concerned, even a small fine may be impossible to pay. Furthermore, young persons may have special needs that can be addressed through a probation order. A short probation order, not exceeding three months, would give the court an opportunity to ensure that the young person would be under supervision long enough to

identify any special needs of the young person. For example, a probation order would help to identify whether the young person's liquor offence was related to an alcohol problem. At the same time the short term of the probation order would ensure that the young person was referred to the appropriate social agencies and that the probation order did not become punishment for the alcohol problem.

(3) Discharges: There is no absolute discharge provision for adult provincial offenders because the primary purpose of a discharge in the Criminal Code is to avoid giving the accused a criminal record. A provincial offences record is of little significance so the discharge provisions were not thought necessary. However, where young persons are concerned, a discharge may serve another function - to inform the young person that his conduct constitutes a breach of the law, but that, because of his circumstances, there will be no further interference with his liberty following the conviction.

Part III Proceedings

The sentencing options for adult provincial offenders are as follows:

1. Fines - The fines established by the offence-creating statutes or, if no fine is established, a fine of not more than \$2,000.00.
2. Imprisonment - Only as established by the offence-creating statute.

3. Forfeiture - Only as established by the offence-creating statute, e.g., the Game and Fish Act s.16; Provincial Parks Act, s.14; Liquor Licence Act, s.56.
4. Compensation - Only as established by the offence-creating statute, e.g., Trespass to Property Act.
5. Probation - Where a sentence is suspended or, in addition to a fine
 - up to two years
 - subject to regulations being made
 - (a) may include restitution if authorized by offence-creating statute or
 - (b) may include community service if the offence is punishable by imprisonment.

The Proposed amendments for young offenders accept those options with the following modifications and additions:

- (1) Discharges should be available, as discussed above.
- (2) Fines: Where the maximum fine could exceed \$1,000 it should be limited to \$1,000 for young persons. This is consistent with the Young Offenders Act
- (3) Probation: The maximum length of probation should be limited to one year.
- (4) Imprisonment: The most significant amendment to the penalty provisions for provincial offences is the elimination of custodial sentences for young persons.

A major goal of the Provincial Offences Act is the reduction of incarceration for provincial offences. Under the general sentencing provisions of the

Provincial Offences Act, imprisonment is not available unless it is specifically provided for in the offence-creating statute. It is a reasonable extension of this policy to eliminate incarceration as a sentencing alternative where a young person is convicted of a provincial offence.

It is not the purpose of provincial offences to protect society against dangerous offenders. That is the goal of criminal law and a young person who engages in criminal behaviour should be dealt with under the Young Offenders Act.

Fines and probation orders will usually be sufficient to enforce the regulatory provisions of provincial offences. According to Statistics Canada only two percent (42) of young persons found guilty of a provincial offence (other than truancy) were committed to a juvenile institution. Twenty-six (26) were convicted of liquor offence, 7 for traffic offences and 7 for trespassing. A sample of 126 cases taken from Ottawa, Toronto, Thunder Bay and Waterloo showed only 1 young person committed to training school for a provincial offence, which was a traffic offence. Eight percent (1,217) of young persons committing criminal offences were committed to a juvenile institution.

Custody may still be available for breach of a sentencing order.

ENFORCEMENT OF SENTENCES

Because the Provincial Offences Act aims to avoid imprisonment in relation to provincial offences, the Act encourages alternatives to imprisonment even where the defendant has defaulted in payment of a fine. The Young Offenders Act also contains special provisions for failure to comply with a disposition. However, elimination of imprisonment as a sentence for a young provincial offender requires consideration of the problem of the defiant defendant who refuses to comply with any non-custodial sentence.

The existing Provincial Offences Act enforcement provisions are as follows:

1. Civil Enforcement

Where a fine is in default the court may file a certificate in a civil court and the fine can be collected as if it were a judgment of that court.

For example, the defendant's goods could be seized by the sheriff under a writ of execution.

2. Licence Suspension

Where a fine is in default the court shall order suspension of any permit or licence that may be suspended in relation to that offence and may direct the clerk of the court to proceed with civil judgment.

3. Warrant of Committal

A warrant of committal may be issued only where all other reasonable methods of collecting the fine have been tried or would be unsuccessful. Even so, the sentencing court may still order that no warrant of committal be issued on default if a warrant would defeat the ends of justice.

4. Probation Orders

Where a defendant breaches probation the court may

- (a) impose a fine of not more than \$1,000.00 or
- (b) order imprisonment not more than thirty days
- (c) increase the probation order
- (d) in some cases, impose the sentence that was suspended on making the original probation order.

The proposed amendments would continue to recognize civil enforcement and licence suspension as methods of enforcing sentences. Under the Highway Traffic Act, where a person ordered to pay a fine does not hold a licence, he is deemed to hold a licence and cannot get a new licence until the fine is paid. However, imprisonment for failure to pay a fine could be extremely harsh for a young person.

Presumably, because of the options available to the court for avoiding imprisonment of even an adult who is unable to pay a fine, there is little likelihood of a court imprisoning a young person for a defaulted fine.

Nevertheless, without amendment the possibility would still exist. Therefore, the proposed amendments provide that in circumstances where the court could order imprisonment for an adult defendant, for a young person the court may only make a probation order up to 90 days.

In order to ensure compliance with the probation order whether made following a default fine, or made upon conviction under Part III, all the provisions for enforcement of probation orders, including the possibility of a custodial sentence up to 30 days, would apply. Should the court ever impose a custodial sentence, the sentence would be served in an "open custody" facility designated under the Young Offenders Act.

It is important to realize that the possibility of a custodial sentence exists only for disobedience of the court's probation order and not for the original traffic or liquor offence. The purpose of this provision is to ensure respect for the courts and the administration of justice.

EXPLANATORY NOTES

PROVINCIAL OFFENCES STATUTE
LAW AMENDMENT ACT, 1983

Explanatory Notes

Provincial Offences Statute Law Amendment Act, 1983

At present a person under the age of sixteen who is alleged to have violated a provincial statute or municipal by-law is prosecuted under the Juvenile Delinquents Act (Canada). However, the new Young Offenders Act (Canada) will apply only to young persons alleged to have violated the Criminal Code and other federal statutes. It is proposed that the Provincial Offences Act, with certain modifications contained in a new Part V-A, apply to young persons alleged to have committed provincial offences. However, young persons will be tried by judges of the provincial court (family division) and of the Unified Family Court.

SECTION 1. Provincial Offences Act Section 91a. Self-explanatory.

Section 91b. The Provincial Offences Act does not apply to children under the age of twelve who commit offences.

Section 91c. The summary offence notice or "ticket" procedure under Part I does not apply to young persons.

Section 91d. A young person's parent or another responsible adult is to be notified of the charge against the young person.

Section 91e. The sentencing options available in a young person's case, in proceedings commenced by certificate, are:

1. A fine not exceeding \$300.
2. A probation order.
3. An absolute discharge.

Section 91f. A young person must be present at his trial, unless the court permits otherwise, and may not be convicted in his absence. If he fails to appear in court a warrant for his arrest may be issued, but he is not subject to a penalty for failure to appear as an adult would be.

Section 91g. Information which might identify a young person in connection with an offence or alleged offence may not be published. The penalty is the same as the penalty prescribed for similar contraventions of the Child Welfare Act.

Section 91h. The pre-sentence report is available in a young person's case whether the proceeding was commenced by information or by certificate of offence. It is mandatory where imprisonment for breach of probation is being considered.

Sections 91i and 91k. A young person may not be imprisoned, except for breach of probation, and then only in a place of open custody designated under the Young Offenders Act (Canada).

The sentencing options available in a young person's case, in proceedings commenced by information, include:

1. A fine not exceeding \$1,000.
2. A probation order.
3. An absolute discharge.

Section 91j. A young person may not be imprisoned for failure to pay a fine, but may instead be subjected to a probation order.

Section 91l. A young person's appeal is made to the county or district court, whether the proceeding was commenced by information or by certificate.

Section 91m. Young persons may be arrested without warrant only where this is necessary to establish identity or prevent the continuation or repetition of an offence that seriously endangers the young person or the person or property of another.

Section 91n. A young person who has been arrested shall be released unless his continued detention is necessary for the same reasons that would justify an arrest without warrant. If he is held until he can be brought before a justice for a bail hearing, a parent is to be notified.

A young person who is detained in custody shall wherever possible be detained in a place of temporary detention designated under the Young Offenders Act (Canada). He may be detained in a place where adults are also detained only if a justice authorizes this.

Section 91o. A young person's trial and sentencing are to be conducted by a judge.

Section 91p. Part V-A will apply to offences committed after it comes into force, and also to earlier offences that could have been, but were not, made the subject of proceedings under the Juvenile Delinquents Act (Canada). The new Young Offenders Act (Canada) provides that this category of offences shall be dealt with under provincial law.

SECTIONS 2, 3 and 4. Provincial Courts Act and Unified Family Court Act

The Provincial Court (Family Division) and the Unified Family Court are given jurisdiction over young persons charged with provincial offences.

**An Act to amend certain
Statutes relating to the Commission
of Offences by Young Persons**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PROVINCIAL OFFENCES ACT

**Part V-A,
(ss.91a-91p),
enacted**

1. The Provincial Offences Act, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART V-A

YOUNG PERSONS

Interpretation

91a. In this Part,

- (a) "parent", when used with reference to a young person, includes an adult with whom the young person ordinarily resides;
- (b) "young person" means a person who is or, in the absence of evidence to the contrary, appears to be,
 - (i) twelve years of age or more, but
 - (ii) under sixteen years of age,
 and includes a person sixteen years of age or more charged with having committed an offence while he was twelve years of age or more but under sixteen years of age.

**Minimum
age**

91b. No person shall be convicted of an offence committed while he was under twelve years of age.

**Offence
notice not
to be used**

91c. A proceeding commenced against a young person by certificate shall not be initiated by an offence notice under clause 3(2)(a).

Notice to parent

91d.-(1) Where a summons is served upon a young person under this Act, the provincial offences officer shall as soon as practicable give notice to a parent of the young person by sending the parent a copy of the summons by ordinary mail.

Where no notice given

(2) Where notice has not been given under subsection (1) and no person to whom notice could have been given appears with the young person, the court may,

- (a) adjourn the hearing to another time to permit notice to be given; or
- (b) dispense with notice.

Saving

(3) Failure to give notice to a parent under subsection (1) does not in itself invalidate the proceedings against the young person.

Sentence where proceedings commenced by certificate

91e.-(1) Notwithstanding subsection 12(1), where a young person is found guilty of an offence in proceedings commenced by certificate, the court may,

- (a) convict the young person and,
 - (i) order the young person to pay a fine not exceeding the set fine corresponding to the offence, the maximum fine prescribed for the offence, or \$300, whichever is the least, or
 - (ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or
- (b) discharge the young person absolutely.

Term of probation order

(2) Section 72 applies, with necessary modifications, to a probation order made under subclause (1)(a)(ii), in the same manner as if the proceedings were commenced by information, except that the probation order shall not remain in force for more than ninety days from the date when it takes effect.

s.12(2)
applies
where
proceedings
initiated
by summons

Young
person to
be present
at trial

Court may
permit absence

Application
of ss.43,55

Failure of
young person
to appear

Identity of
young person
not to be
published

Offence

(3) Subsection 12(2) applies, with necessary modifications, where a young person is convicted of an offence in proceedings initiated by summons, in the same manner as if the proceedings were initiated by offence notice.

91f.-(1) Subject to subsection 53(1) and subsection (2), a young person shall be present in court during the whole of his trial.

(2) The court may permit a young person to be absent during the whole or any part of his trial, on such conditions as the court considers proper.

(3) Sections 43 and 55 do not apply to a young person who is a defendant.

(4) Where a young person who is a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the young person does not appear upon the resumption of a hearing that has been adjourned, the court may adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the young person.

91g.-(1) No person shall publish by any means a report,

(a) of an offence committed or alleged to have been committed by a young person; or

(b) of a hearing, adjudication, sentence or appeal concerning a young person who committed or is alleged to have committed an offence,

in which the name of or any information serving to identify the young person is disclosed.

(2) Every person who contravenes subsection (1) and every director, officer or employee of a corporation who knowingly concurs in a contravention of subsection (1) by the corporation is guilty of an offence and is liable on conviction to a fine of not more than \$10,000.

Pre-sentence report

Pre-sentence report mandatory where imprisonment considered

Penalties limited

Sentence where proceedings commenced by information

Term of probation order

No imprisonment for non-payment of fine

91h.-(1) Section 57 applies with necessary modifications where a young person is convicted of an offence in a proceeding commenced by certificate of offence, in the same manner as if the proceeding were commenced by information.

(2) Where a young person who is bound by a probation order is convicted of an offence constituting a breach of condition of the order and the court is considering imposing a sentence of imprisonment under section 75, the court shall direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence, and the clerk of the court shall cause a copy of the report to be provided to the defendant or his counsel or agent and to the prosecutor.

91i.-(1) Notwithstanding the provisions of this or any other Act, no young person shall be sentenced,

- (a) to be imprisoned, except under clause 75(d); or
- (b) to pay a fine exceeding \$1,000.

(2) Where a young person is found guilty of an offence in proceedings commenced by information, the court may,

- (a) convict the young person and,
 - (i) order the young person to pay a fine not exceeding the maximum prescribed for the offence or \$1,000, whichever is less, or
 - (ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or
- (b) discharge the young person absolutely.

(3) A probation order made under subclause (2)(a)(ii) shall not remain in force for more than one year from the date when it takes effect.

91j.-(1) No warrant of committal shall be issued against a young person under section 70.

Probation
order in
lieu of
imprisonment

(2) Where it would be appropriate, but for subsection (1), to issue a warrant against a young person under subsection 70(3), a judge may direct that the young person comply with the conditions prescribed in a probation order, where the young person has been given fifteen days notice of the intent to make a probation order and has had an opportunity to be heard.

Term of
probation
order

(3) A probation order made under subsection (2) shall not remain in force for more than ninety days from the date when it takes effect.

Open
custody

29-30-31
Eliz.II,c.110

91k. Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75(d), the term of imprisonment shall be served in a place of open custody designated under section 24 of the Young Offenders Act (Canada).

Appeal

91l. Where the defendant is a young person, an appeal under subsection 118(1) shall be to the county or district court of the county or district in which the adjudication was made, but the procedures and the powers of the court and any appeal from the judgment of the court shall be the same as if the appeal were to the provincial court (criminal division).

Arrest
without
warrant
limited

91m. No person shall exercise an authority under this or any other Act to arrest a young person without warrant unless the person has reasonable and probable grounds to believe that it is necessary in the public interest to do so in order to,

- (a) establish the young person's identity; or
- (b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or to the person or property of another.

s.133 does
not apply

91n.-(1) Section 133 does not apply to a young person who has been arrested.

Release
after arrest
by officer

(2) Where a police officer acting under a warrant or other power of arrest arrests a young person, the police officer shall, as soon as is practicable, release the young person from custody after serving him with a summons unless he has reasonable and probable grounds to believe that it

is necessary in the public interest for the young person to be detained in order to,

- (a) establish the young person's identity; or
- (b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or the person or property of another.

Release by officer in charge

(3) Where a young person is not released from custody under subsection (2), the police officer shall deliver him to the officer in charge who shall, where in his opinion the conditions set out in clause (2)(a) or (b) do not or no longer exist, release the young person,

- (a) upon serving him with a summons; and
- (b) upon his entering into a recognizance in the prescribed form without sureties conditioned for his appearance in court.

Notice to parent

(4) Where the officer in charge does not release the young person under subsection (3), the officer in charge shall as soon as possible notify a parent of the young person by advising the parent, orally or in writing, of the young person's arrest, the reason for the arrest and the place of detention.

ss.134,135 apply

(5) Sections 134 and 135 apply with necessary modifications to the release of a young person from custody under this section.

Place of custody

(6) No young person who is detained under section 134 shall be detained in any part of a place in which an adult who has been charged with or convicted of an offence is detained unless a justice so authorizes, on being satisfied that,

- (a) the young person cannot, having regard to the young person's own safety or the safety of others, be detained in a place of temporary detention for young persons; or
- (b) no place of temporary detention for young persons is available within a reasonable distance.

Idem

29-30-31
Eliz.II,
c.110

Functions of
justice of
peace
limited

Application

(7) Wherever possible, a young person who is detained in custody shall be detained in a place of temporary detention designated under subsection 7(1) of the Young Offenders Act (Canada).

91o. Notwithstanding anything else in this Act, where a defendant is a young person the powers of a justice shall not be exercised by a justice of the peace, except under Part III and VII.

91p. This Part applies to proceedings commenced after this Part comes into force.

PROVINCIAL COURTS ACT

s.18,
amended

**2. Section 18 of the Provincial Courts Act,
being chapter 398 of the Revised Statutes of
Ontario, 1980, is amended by adding thereto the
following subsection:**

Exception:
young
persons

(3) Notwithstanding subsection (2), a proceeding in a provincial offences court against a young person shall be conducted in the provincial court (family division) in the same county or district, or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as a provincial offences court.

s.23(2)(b),
re-enacted

**3.-(1) Clause 23(2)(b) of the said Act is
repealed and the following substituted therefor:**

(b) shall be deemed to be and shall sit as a provincial offences court for the purpose of dealing with young persons as defined in the Provincial Offences Act.

R.S.O.1980,
c.400

s.23(3),
enacted

**(2) Section 23 of the said Act is amended by
adding thereto the following subsection:**

Where family
court sits
as provincial
offences court

(2) The Chief Judge of the Provincial Courts (Family Division) is the chief judge of the provincial courts (family division) sitting as provincial offences courts, and the clerk of a provincial court (family division) is the clerk of that court sitting as a provincial offences court.

UNIFIED FAMILY COURT ACT

s.16(6),
re-enacted

4.- (1) Clause 16(b) of the Unified Family Court Act, being chapter 515 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

R.S.O.1980,
c.400

(b) shall be deemed to be and shall sit as a provincial offences court for the purpose of dealing with young persons as defined in the Provincial Offences Act.

s.16(2),
enacted

(2) Section 16 of the said Act is amended by adding thereto the following subsection:

Exception

(2) Subsections 10(2), 19(1) and 33(2) of the Provincial Court Act do not apply to the Unified Family Court sitting as a provincial offences court under clause (1)(b).

Commencement

5. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

6. The short title of this Act is the Provincial Offences Statute Law Amendment Act, 1983.

